

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* GASTON, Minors.

UNPUBLISHED  
October 16, 2014

No. 320958  
Ottawa Circuit Court  
Family Division  
LC No. 11-069054-NA

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Before: BORRELLO, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (3)(g), (3)(i), and (3)(l). Because the trial court did not clearly err by finding that termination was in the children's best interests, we affirm.

Respondent argues the trial court erred by finding that termination was in the minor children's best interests. We review for clear error a trial court's finding that termination is in a child's best interests. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

After a trial court has found that a statutory ground for termination has been proven by clear and convincing evidence,<sup>1</sup> the court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

In this case, the evidence showed that the minor children were not bonded with respondent and that the children needed permanency that the respondent could not provide at the

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<sup>1</sup> The trial court found four statutory grounds for termination and respondent does not challenge those findings on appeal.

time of the termination hearing because she was incarcerated. Nevertheless, respondent argues that the trial court erred in its best-interest determination because this case is analogous to *Mason*, 486 Mich at 142. In *Mason*, our Supreme Court reversed a termination on the basis that statutory grounds were not established. *Id.* at 169. However, the Court noted that “a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a),” and that such a placement is “an explicit factor to consider in determining whether termination was in the children’s best interests.” *Id.* at 164. The critical difference between *Mason* and respondent’s case is that, in *Mason*, the incarcerated respondent had “voluntarily grant[ed] legal custody to his relatives during his remaining term of incarceration.” *Id.* Here, the minor children were placed with a nonrelative foster care family during the proceedings and a foster care worker testified that he was unaware of any family member of respondent or the children’s father who could appropriately care for the children during the case. In other words, the children were not “being cared for by relatives[,]” MCL 712A.19a(6)(a), and, therefore, respondent is not entitled to relief under *Mason*.

Respondent also argues that this case is similar to *Mason* because her incarceration limited her opportunities to meaningfully participate in services. However, petitioner’s error in *Mason* was that it failed to ensure that the respondent had a meaningful opportunity to comply with a case service plan. *Id.* at 169. For example, the incarcerated *Mason* respondent was denied the opportunity to participate by phone at many of the hearings and the Department of Human Services failed to provide respondent with an opportunity to participate in services, as required by law. *Id.* at 155, 159-160. In this case, there is no indication that respondent was not provided with a meaningful opportunity to participate in services and the proceedings. Accordingly, the trial court did not clearly err by finding that termination of respondent’s parental rights was in the minor children’s best interests.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Deborah A. Servitto  
/s/ Douglas B. Shapiro